

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ANTHONY GARIBAY, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

SELECT HOME WARRANTY LLC,
a New Jersey registered company,

Defendant.

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

Plaintiff Anthony Garibay (“Plaintiff Garibay” or “Garibay”) brings this Class Action Complaint and Demand for Jury Trial against Defendant Select Home Warranty LLC (“Defendant” or “Select Home Warranty”) to stop the Defendant from violating the Telephone Consumer Protection Act (“TCPA”) by placing unsolicited pre-recorded calls without consent, including calls that were placed after consumers specifically opted out from receiving additional calls. Plaintiff also seeks injunctive and monetary relief for all persons injured by Defendant’s conduct. Plaintiff Garibay, for this Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

PARTIES

1. Plaintiff Anthony Garibay is a resident of Surprise, Arizona.

2. Defendant Select Home Warranty is a Delaware registered company headquartered in Mahwah, New Jersey. Defendant Select Home Warranty conducts business throughout this throughout this District and the U.S.

JURISDICTION AND VENUE

3. This Court has federal question subject matter jurisdiction over this action under 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. §227.

4. This Court has personal jurisdiction over the Defendant because the Defendant has its headquarters located in this state.

5. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant has its headquarters in this District and the wrongful conduct giving rise to this case was directed from this District.

INTRODUCTION

6. As the Supreme Court explained at the end of its term this year, “Americans passionately disagree about many things. But they are largely united in their disdain for robocalls. The Federal Government receives a staggering number of complaints about robocalls—3.7 million complaints in 2019 alone. The States likewise field a constant barrage of complaints. For nearly 30 years, the people’s

representatives in Congress have been fighting back.” *Barr v. Am. Ass'n of Political Consultants*, No. 19-631, 2020 U.S. LEXIS 3544, at *5 (U.S. July 6, 2020).

7. When Congress enacted the TCPA in 1991, it found that telemarketers called more than 18 million Americans every day. 105 Stat. 2394 at § 2(3).

8. By 2003, due to more powerful autodialing technology, telemarketers were calling 104 million Americans every day. In re Rules and Regulations Implementing the TCPA of 1991, 18 FCC Rcd. 14014, ¶¶ 2, 8 (2003).

9. The problems Congress identified when it enacted the TCPA have only grown exponentially in recent years.

10. According to online robocall tracking service “YouMail,” 4.5 billion robocalls were placed in November 2023 alone, at a rate of 150.2 million per day. www.robocallindex.com (last visited December 10, 2023).

11. The FCC also has received an increasing number of complaints about unwanted calls. FCC, Consumer Complaint Data Center, www.fcc.gov/consumer-help-center-data.

12. “Robocalls and telemarketing calls are currently the number one source of consumer complaints at the FCC.” Tom Wheeler, *Cutting off Robocalls* (July 22, 2016), statement of FCC chairman.¹

¹ <https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls>

13. “The FTC receives more complaints about unwanted calls than all other complaints combined.” Staff of the Federal Trade Commission’s Bureau of Consumer Protection, *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking, CG Docket No. 02-278, at 2 (2016).²

COMMON ALLEGATIONS

14. Defendant Select Home Warranty sells home warranty plans to consumers throughout the U.S.³

15. Select Home Warranty places pre-recorded calls to consumers to promote and sell its warranty plans.

16. Consumers have captured and posted pre-recorded calls they received from Select Home Warranty online, including:

² https://www.ftc.gov/system/files/documents/advocacy_documents/comment-staff-ftc-bureau-consumer-protection-federal-communications-commission-rules-regulations/160616robocallscomment.pdf

³ <https://www.linkedin.com/company/select-home-warranty/about/>

Typical Messages

QO Hey, this is John Culling from Select Home Warranty. Today only, I can take \$50 off the price that you paid for last year's plan. So call me back as soon as possible at 855-267-3532.

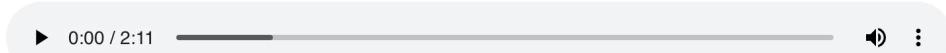
QO Hi this is Select home warranty calling your home warranty plan is up for renewal. To avoid any lapse in coverage. Please press one now to speak to a live representative. Thank you. This is Select home warranty calling. Your policy is expired with us but if you renew today we will take \$50 off the price you paid last year. Please press one to speak to an agent now. Press seven to be taken off the list.

QO This is Select home warranty calling. Your policy is expired with us but if you renew today we will take \$50 off the price you paid last year. Please press one to speak to an agent now. Press seven to be taken off the list. This is Select home warranty calling your home warranty plan is expiring soon. Please press one to speak with a live agent and avoid a lapse in your coverage. To opt out press nine.

4

(703) 890-4039 is a Vehicle Warranty Robocall

Be cautious.

LISTEN 

TRANSCRIPT *Hi, this is Lorena from Select Home Warranty on a recorded line. How's your day going today? Okay. Now, as I said, I'm with Select Home Warranty, and you can press one to be removed. And I'm calling in regards to the inquiry you placed on our website about a free quote and discounts that we have available. Do you just have a minute to discuss the coverage and discount on questions? Hello? Are you still there? Yes. Okay, great. Just give me 1 minute while I bring you Senior Home Warranty Specialist on the line with us. Okay, good. Just a second. Hello? Okay. All right. Hello? Are you still there? Just a second, please. Yes. So do you have any favorite shows that you've been watching? Select home warranty. Can I help you? Hi. This is Lorena from the Select Home Warranty Pre qualification team. I have someone on the line who's interested in a free Home Warranty quote. Can you go ahead and help them with that, please? Yes. Hi, how are you? Hello. Are you looking for a home warranty. Hello? Hello?*

DATE BLOCKED June 19, 2023

5

17. In addition, consumers reported pre-recorded calls that they received from Select Home Warranty on CallFilter.app:

⁴ <https://directory.youmail.com/phone/855-224-7758>

⁵ <https://nomorobo.com/lookup/703-890-4039>

	Advertising reported by anonymous <u>Pre-recorded computer-generated voice. Blocked (robocall / recorded message)</u>	5 months ago	 
	Other reported by anonymous caller unknown. <u>(robocall / recorded message)</u>	10 months ago	 
	Other reported by anonymous <u>(robocall / recorded message)</u>	10 months ago	 
	Other reported by anonymous dont pick up <u>(robocall / recorded message)</u>	10 months ago	 
	Other reported by anonymous <u>(robocall / recorded message)</u>	10 months ago	  6

18. Unfortunately, Defendant Select Home Warranty is placing pre-recorded solicitation calls to consumers like Plaintiff Garibay without consent.

19. Furthermore, Select Home Warranty continues to call these consumers despite all of their best efforts to opt-out of these calls using Select Home Warranty's own opt-out mechanisms or by calling the Defendant and speaking to a live agent demanding the calls stop, leaving consumers in an endless doom loop of prerecorded calls they cannot exit from.

20. Many consumers have posted complaints online about unwanted calls, including pre-recorded calls that they received from Defendant Select Home Warranty, including complaints from consumers who were unable to opt-out, such as:

- ***** keeps leaving me voicemails when I have my phone number on DoNot call list. There is nobody that picks up when I dial

⁶ <https://callfilter.app/18552247758>

this number. Please ensure this company stops contacting me or anybody else”⁷

- “Hi! I previously had a policy with Select Home and was not ***** happy with them or their service and opted not to renew. This is not the source of my complaint though, I understand that some times this don't work out. The source of my complaint is that Select Home continues to harass me via daily email and phone calls to renew. I have selected that ***I do not wish to renew via both email and phone.*** I have emailed the sales and info emails directly ***requesting that they remove me from all contact lists and yet, they continue to bother me daily via both channels.*** I want them to stop contacting me immediately. This is completely unacceptable behavior.”⁸ (emphasis added)
- “This company will not leave me alone! It spam calls me EVERY DAY! Same ROBOT message every time and ***I have called and asked them to STOP CALLING and remove me from their list but alas the calls keep coming.*** Sick of this company and their sleazy advertising tactics.”⁹ (emphasis added)
- “7 to 10 calls received today.”¹⁰
- “select home warranty telemarketing”¹¹
- “nuisance call”¹²
- “don’t need this”¹³
- “Unsolicited call. Do Not Answer”¹⁴
- “Unsolicited call. STOP CALLING!”¹⁵
- “Calls at least 3-4 times a week. Blocked the number, called them back, and ***asked to be taken off of their phone list as well as emailed a***

⁷ <https://www.bbb.org/us/nj/mahwah/profile/home-warranty-plans/select-home-warranty-llc-0221-90155584/complaints?page=2>

⁸ Id.

⁹ <https://www.bbb.org/us/nj/mahwah/profile/home-warranty-plans/select-home-warranty-llc-0221-90155584/complaints?page=6>

¹⁰ <https://lookup.robokiller.com/p/855-224-7758>

¹¹ <https://www.shouldianswer.com/phone-number/8552673532>

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

representative. Nothing, *they are still calling since May*, not it's August!"¹⁶ (emphasis added)

21. In response to these calls, Plaintiff Garibay brings this case seeking injunctive relief requiring the Defendant to cease from violating the TCPA, and an award of statutory damages to the members of the Classes and costs.

PLAINTIFF GARIBAY'S ALLEGATIONS

22. Plaintiff Garibay is the sole owner and user of his cell phone number ending in 4753.

23. Plaintiff Garibay has owned his cell phone number for more than 5 years.

24. For a full year, beginning near the end of 2022, Plaintiff Garibay has received unsolicited solicitation calls from Defendant Select Home Warranty to his cell phone number.

25. The majority of the calls that Plaintiff Garibay received were pre-recorded.

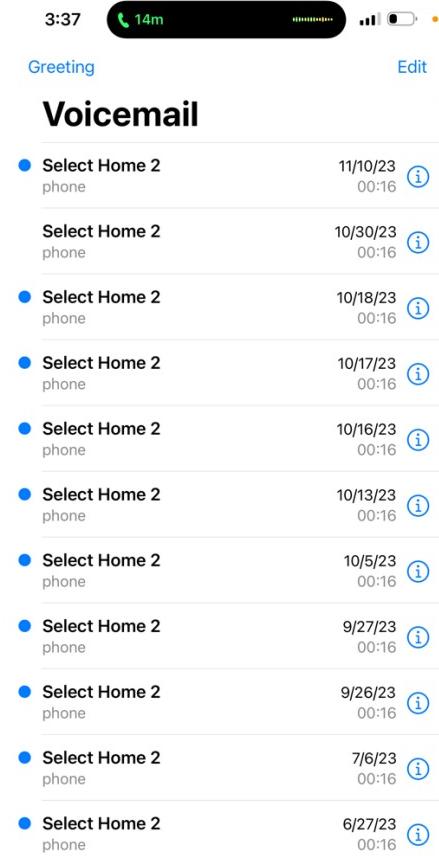
26. When Plaintiff Garibay answered pre-recorded calls from Select Home Warranty, he was given an option to either speak to a live agent or press another button to stop the calls.

¹⁶ <https://us.shouldianswer.net/phone-number/6414583416>

27. Plaintiff Garibay repeatedly pressed the button associated with opting-out, but that did not stop the calls.

28. When calls were not answered, pre-recorded voicemails were left asking Plaintiff to call Select Home Warranty.

29. Plaintiff Garibay received the following pre-recorded voicemails from Select Home Warranty, all of which contain the exact same message, and all of which are exactly 16-seconds in length:



30. Plaintiff received many other unsolicited voicemails, but were deleted since they were taking up space on his phone.

31. When Plaintiff spoke to live employees, he was told that the calls were intended for Lisa.

32. Plaintiff Garibay does not know who Lisa is.

33. Plaintiff Garibay told the employees that they were calling the wrong number multiple times, but the calls have continued.

34. Plaintiff Garibay was so frustrated by the calls, he sent a cease-and-desist letter to Defendant Select Home Warranty on November 16, 2023.

35. In response, Plaintiff Garibay received the following acknowledgement on November 16, 2023:

----- Forwarded Message -----

From: Select Home Warranty <noreply@selecthomewarranty.com>
To: anthonygaribay407@yahoo.com <anthonygaribay407@yahoo.com>
Sent: Thursday, November 16, 2023 at 02:11:49 PM MST
Subject: Thank You for Your Email



Thank you for your email. Your case # is 02815175.

You will receive a response within 24Hrs.

Thank You

Select Home Warranty
1-855-267-3532

ref:!00D1l0m05g.!5008W01Fg5dy:ref

36. Despite the cease-and-desist letter, Plaintiff Garibay received an unsolicited call from Select Home Warranty to his cell phone on November 27, 2023 at 12:34 PM, from 855-224-7758.

37. This call was not answered.

38. On November 29, 2023 at 3:22 PM, Plaintiff Garibay received another unsolicited pre-recorded call to his cell phone from Select Home Warranty, from 855-224-7758.

39. When Plaintiff Garibay answered this call, he heard an automated voice identify the company name Select Home Warranty, asking Plaintiff to press a button to speak to a live agent, or press another button to stop the calls.

40. On December 4, 2023 at 10:11 AM, Plaintiff Garibay received another unsolicited call to his cell phone from Select Home Warranty, from 855-224-7758.

41. This call was not answered, but a pre-recorded voicemail was left stating:

“Hey, this is John calling from Select Home Warranty. Today only, I can take \$50 off the price that you paid for last year’s plan. So call me back as soon as possible. At 855-267-3532.”¹⁷

42. On December 18, 2023 at 5:30 PM, Plaintiff Garibay received another unsolicited call to his cell phone from Select Home Warranty, from 855-224-7758.

¹⁷ <https://www.dropbox.com/scl/fi/arw1uoui4ksifhiecmkk/voicemail-1236.m4a?rlkey=yacgzxqi6w5oqitcucve8zjsl&dl=0>

43. This call was not answered, but a pre-recorded voicemail was left stating:

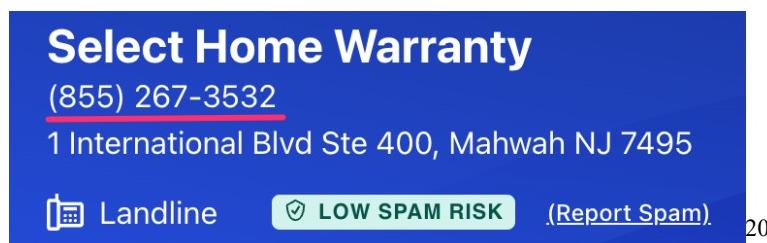
“Hey, this is John calling from Select Home Warranty. Today only, I can take \$50 off the price that you paid for last year’s plan. So call me back as soon as possible. At 855-267-3532.”¹⁸

44. On December 21, 2023 at 1:51 PM, Plaintiff Garibay received another unsolicited call to his cell phone from Select Home Warranty, from 855-224-7758.

45. This call was not answered, but a pre-recorded voicemail was left stating:

“Hey, this is John calling from Select Home Warranty. Today only, I can take \$50 off the price that you paid for last year’s plan. So call me back as soon as possible. At 855-267-3532.”¹⁹

46. Phone number 855-267-3532 is registered to Select Home Warranty:



47. Plaintiff believes the 3 aforementioned voicemails were pre-recorded because they are identical in speech, intonation, content and each is exactly 16 seconds long.

¹⁸ <https://www.dropbox.com/scl/fi/235pva90vw3j27htbmt0j/voicemail-1257.m4a?rlkey=7w7w3ea4d5u7z9m8jqgo67bic&dl=0>

¹⁹ <https://www.dropbox.com/scl/fi/cvqp11yvmykravld7y842/voicemail-1267.m4a?rlkey=wi8sg3jjk7gc5ou825nv97ts5&dl=0>

²⁰ <https://www.whitepages.com/phone/1-855-267-3532>

48. Plaintiff never provided consent for Defendant Select Home Warranty to place pre-recorded solicitation calls to his cell phone number.

49. The unauthorized telephone calls that Plaintiff received from the Defendant has harmed Plaintiff Garibay in the form of annoyance, nuisance, and invasion of privacy, occupied his phone memory, and disturbed the use and enjoyment of his phone.

50. In addition, Plaintiff had to spend considerable time speaking to and sending a cease-and-desist letter to the Defendant so he could ask for the calls to stop.

51. Seeking redress for these injuries, Plaintiff Garibay, on behalf of himself and Classes of similarly situated individuals, brings suit under the TCPA.

CLASS ALLEGATIONS

52. Plaintiff Garibay brings this action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) and seeks certification of the following Classes:

Pre-recorded No Consent Class: All persons and entities throughout the United States (1) to whom Defendant placed an unsolicited call, (2) directed to a number assigned to a cellular telephone service, (3) with an artificial or prerecorded voice, (4) from four years prior to the filing of this action through the date of class certification.

Pre-recorded Stop Call Class: All persons and entities throughout the United States (1) to whom Defendant placed a call, (2) directed to a number assigned to a cellular telephone service, (3) with an artificial or prerecorded voice, (4) after the consumer placed a request for the calls to stop, (5) from four years prior to the filing of this action through the date of class certification.

53. The following individuals are excluded from the Classes: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, its subsidiaries, parents, successors, predecessors, and any entity in which either Defendant or their parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely request for exclusion from the Classes; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against the Defendant have been fully and finally adjudicated and/or released. Plaintiff Garibay anticipates the need to amend the Class definition following appropriate discovery.

54. **Numerosity and Typicality:** On information and belief, there are hundreds, if not thousands of members of the Classes such that joinder of all members is impracticable, and Plaintiff is a member of the Classes.

55. **Commonality and Predominance:** There are many questions of law and fact common to the claims of the Plaintiff and the Classes, and those questions predominate over any questions that may affect individual members of the Classes. Common questions for the Classes include, but are not necessarily limited to the following:

- (a) whether Defendant placed pre-recorded voice message calls to Plaintiff and members of the Pre-recorded No Consent Class without first obtaining consent to make the calls;
- (b) whether the calls constitute a violation of the TCPA;
- (c) whether Defendant continued to place pre-recorded voice message calls to Plaintiff and members of the Pre-recorded Stop Call Class after being told to stop calling;
- (d) whether members of the Classes are entitled to treble damages based on the willfulness of Defendant's conduct.

56. **Adequate Representation:** Plaintiff Garibay will fairly and adequately represent and protect the interests of the Classes, and has retained counsel competent and experienced in class actions. Plaintiff Garibay has no interests antagonistic to those of the Classes, and the Defendant has no defenses unique to Plaintiff. Plaintiff Garibay and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Classes, and have the financial resources to do so. Neither Plaintiff Garibay nor his counsel have any interest adverse to the Classes.

57. **Appropriateness:** This class action is also appropriate for certification because the Defendant has acted or refused to act on grounds generally applicable to the Classes and as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Classes

and making final class-wide injunctive relief appropriate. Defendant's business practices apply to and affect the members of the Classes uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct with respect to the Classes as wholes, not on facts or law applicable only to Plaintiff Garibay. Additionally, the damages suffered by individual members of the Classes will likely be small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's actions. Thus, it would be virtually impossible for the members of the Classes to obtain effective relief from Defendant's misconduct on an individual basis. A class action provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

FIRST CLAIM FOR RELIEF
Telephone Consumer Protection Act
(Violation of 47 U.S.C. § 227)

(On Behalf of Plaintiff Garibay and the Pre-recorded No Consent Class)

58. Plaintiff repeats and realleges the prior paragraphs of this Complaint and incorporates them by reference herein.

59. Defendant transmitted unwanted telephone calls to Plaintiff Garibay and the other members of the Pre-recorded No Consent Class using a pre-recorded voice message.

60. These pre-recorded voice calls were made *en masse* without the prior express consent of the Plaintiff and the other members of the Pre-recorded No Consent Class.

61. The Defendant has, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii).

As a result of Defendant's conduct, Plaintiff and the other members of the Pre-recorded No Consent Class are each entitled to a minimum of \$500 in damages, and up to \$1,500 in damages, for each violation.

SECOND CLAIM FOR RELIEF
Telephone Consumer Protection Act
(Violation of 47 U.S.C. § 227)
(On Behalf of Plaintiff Garibay and the Pre-recorded Stop Call Class)

62. Plaintiff repeats and realleges paragraphs 1-57 of this Complaint and incorporates them by reference herein.

63. Defendant transmitted unwanted telephone calls to Plaintiff Garibay and the other members of the Pre-recorded Stop Call Class using a pre-recorded voice message *after* Defendant the person informed Select Home Warranty that s/he no longer wished to receive pre-recorded calls from Select Home Warranty.

64. By placing pre-recorded calls to Plaintiff and members of the Pre-recorded Stop Call Class's cellular telephones *after* they requested to no longer receive call, Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii) by continuing to call without express.

65. As a result of Defendant's conduct, Plaintiff and the other members of the Pre-recorded Stop Call Class are each entitled to a minimum of \$500 in damages, and up to \$1,500 in damages, for each violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Classes, prays for the following relief:

- a) An order certifying this case as a class action on behalf of the Classes as defined above; appointing Plaintiff as the representative of the Classes; and appointing his attorneys as Class Counsel;
- b) An award of actual and/or statutory damages and costs;
- c) An order declaring that Defendant's actions, as set out above, violate the TCPA;
- d) An injunction requiring Defendant to cease all pre-recorded calling activity that is done without proper consent, and to otherwise protect the interests of the Classes; and
- e) Such further and other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff Garibay requests a jury trial.

ANTHONY GARIBAY, individually and
on behalf of all others similarly situated,

DATED this 2nd day of January, 2024.

By: /s/ Stefan Coleman
Stefan Coleman
law@stefancoleman.com
Coleman PLLC
1072 Madison Ave, Suite 1
Lakewood, NJ 08701

Telephone: (877) 333-9427

Avi R. Kaufman*
kaufman@kaufmanpa.com
KAUFMAN P.A.
237 S Dixie Hwy, Floor 4
Coral Gables, FL 33133
Telephone: (305) 469-5881

*Attorneys for Plaintiff and the putative
Classes*

** Pro Hac Vice motion forthcoming.*